In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1063

SOUTHWIRE COMPANY AND ROY RICHARDS, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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1. In December 1967, the Board filed a petition in the court of appeals asking that petitioners be adjudged in civil contempt for failing to comply with two decrees of that court (*National Labor Relations Board* v. *Southwire Company*, 313 F. 2d 638, *National Labor Relations Board* v. *Southwire Company*, 352 F. 2d 346) which prohibited the Company from discouraging union membership by discharging or otherwise discriminating against its employees; coercively interrogating them respecting their union activity; threatening employees with reprisals or promising them benefits to discourage union affiliation or sup-

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port; maintaining or enforcing an overly broad no-solicitation rule; and "in any other manner" interfering with, restraining or coercing the employees in the exercise of their rights under Section 7 of the Act. In July 1969, a Special Master, appointed by the court of appeals, filed his report concluding that petitioners had violated the court's decrees by: "*Surveillance* of the employees' Union activities; *Soliciting* employees to pass out anti-Union leaflets and to remove Union badges; *Interrogating* employees concerning their own and other employees' Union activities; *Offering benefits* to the employees if they refrained from Union activities; *Granting benefits* to the employees; *Threatening* employees with changes in working conditions, discharge, the closing of the plant, and other reprisals if they supported the Union; and *Coercing* employees engaged in protected Union activities" (Pet. App. 49, Rep. 219–220).[1] The Master further found that petitioners had violated the decrees by "discriminat[ing] against employees * * * by denying them normal work, assigning them to perform difficult and onerous tasks, issuing warning slips and discharging employees, all on account of their Union activities and sympathies" (Pet. App. 49–50, Rep. 220–221). The Master recommended that petitioners be found in civil contempt and ordered to comply in full with the court's decrees, reinstate the discharged employees, and post appropriate notices (Pet. App. 50–52, Rep. 221–223). The court of appeals adopted the Master's

[1] "Rep." references are to the full report of the Special Master, excerpts from which are set forth at Pet. App. 34–52.

findings, conclusions and recommended order (Pet. App. 66, 67-69).

2. The sole issue raised by petitioners is whether the contempt adjudication should be set aside because the Special Master impermissibly took official notice of prior judicial decisions involving the Company, and used those decisions "to establish an element necessary to adjudge [petitioners] in contempt" (Pet. 2). That issue is not presented here. While the Master alluded to the earlier cases in his report,[2] he based his findings on "the record of this proceeding as a whole." As the court of appeals stated, in rejecting petitioners' contention (Pet. App. 57):

> [W]e find no indication that the Special Master relied on the prior proceedings in any substantial manner to find anti-union animus. Indeed the record read as a whole offers very nearly a text book model of union harassment techniques. We view the Master's language [n. 2, *supra*] as a gratuitous observation. There was abundant

[2] The Master stated (Pet. App. 11):

> It should be noted here that the unsuccessful efforts of unions to organize Southwire's employees in the past have resulted in prior proceedings in this Court. See *N.L.R.B. v. Southwire Co.*, 313 F. 2d 638 (C.A. 5, 1963); *N.L.R.B. v. Southwire Co.*, 359 F. 2d 346 (C.A. 5, 1965); *Southwire Co. v. N.L.R.B.*, 383 F. 2d 923 (C.A. 5, 1967); *Southwire Co. v. N.L.R.B.*, 392 F. 2d 166 (C.A. 5, 1968). There can be [no] question that the Company possesses deep seated anti-union animus not only as recorded in prior proceedings of this Court, but as clearly demonstrated by its vigorous opposition to the 1967 Union organizing campaign as reflected in the printed matter distributed to its employees. *The record of this proceeding as a whole* leaves no doubt that the Company, its officers and its supervisory personnel are unalterably opposed to any unionization of Southwire. [Emphasis added.]

proof of anti-union animus independent of the prior labor history and the prior decisions. We do not perceive that error was committed in this regard.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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